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did not decline the Liberty nomination in 1840; the "great mass" of Southern Whigs were not driven into the Democratic party by the Kansas-Nebraska Bill; Maryland was far from "permanently Democratic" after 1852. The strong point of the essays lies in the clearness and vigor with which political action and motives are analyzed, and for this reason the volumes, in spite of their chaotic character, will be of permanent value.

THEODORE CLARKE SMITH.

*The Life of Oliver Ellsworth.* By WILLIAM GARROTT BROWN.  
(New York: The Macmillan Company; London: Macmillan and Company. 1905. Pp. xi, 369.)

A TRUSTWORTHY and well-written life of Ellsworth is a book worth having, and this life has both of these qualities. I cannot venture to say that it is absolutely free from error, for I have not scrupulously sought for blunders; but those I have noticed are trivial. The book is well written because the English style is clear, straightforward, and simple, not over-elaborated or striving for effect.

There has for a time been a supposition that the Ellsworth descendants had in their possession valuable manuscripts bearing on the life of the statesman, but, though Mr. Brown had access to everything, not much was found. One or two manuscript biographies of Ellsworth, written by relatives, and quite as dangerous in their temptations as helpful in their guidance, and a very few unpublished letters of not much significance were all the family treasures he unearthed. One of these manuscript biographies, which was written by Ellsworth's son-in-law, Joseph Wood, appears to have been used by Flanders. The other, the work of the Reverend Abner Jackson, sometime president of Hobart College, who married a granddaughter of the chief justice, has not, Mr. Brown says, been used before. Still these unpublished works were not very important; to have in one's possession the manuscript of a previous writer who tells of things that cannot be substantiated is embarrassing to a conscientious biographer, and there is evidence that Mr. Brown, burdened with at least sufficient courtesy, was at times puzzled in deciding how far he should be influenced by the efforts of his predecessors. He has not infrequently given rumor and hearsay for what they are worth, which may have been wise; but he rarely if ever speaks with a tone of certainty about any fact not fairly well supported by good evidence. More frequently than is desirable he has had to rely on the unsupported statements of Flanders and Van Santvoord. The material on which he had to depend was in no small measure in print—the *Trumbull Papers*, the *Journals of Congress*, the published *Writings* of the statesmen of the time, Maclay's *Journal*, and like sources. There is no indication that the manuscript journals of the Old Congress were ransacked, but it must be said that in all probability the most that could possibly have been gained by this drudgery would have been the discovery of a few formal details.



Considering the limitations under which the author worked, the reviewer must say that he has produced a good book. We would fain know more of the really critical periods in Ellsworth's life: his work in the Convention of 1787; his ideas of the scope and significance of the Judiciary Act; his experience in France in framing the convention of 1800. But these periods are sanely treated, and I imagine we must rest content. Whatever may be the judgment of the reader on this point, one conclusion he will be forced to reach: he will be compelled to admire the skill with which the story is told and to acknowledge that now Ellsworth comes before us a living personality. This is no small achievement for a biographer. For many of us, at least, Ellsworth has been brought out of a hazy background of impersonalness; from being a mere advocate of measures he has become a man and an impressive one. Moreover, I feel confident, the author has estimated aright the character of his subject; it is not likely that future studies will seriously impair the portrait or demand important revision of judgments.

It is not perfectly plain that the author has properly weighed the influence of Ellsworth in one essential and most significant particular—I mean his influence in framing that important clause in the plan of the Small State Party which declared that the Constitution should be the supreme law of the land, the clause which afterward, somewhat modified, became one of the cardinal clauses of the Constitution, and which was the basis in part for the Judiciary Act of 1789, the "Constitution" of the judiciary. I say it is not perfectly plain, because much must rest on conjecture; and yet when one considers the make-up of the Small State Party, remembers that Ellsworth, Luther Martin, and Paterson were fellow-members of the same club while students at Princeton, notices that Martin moved the insertion of this clause in the Constitution, gives heed to the fact that it was Sherman who stated most clearly the fact that an unconstitutional state law would be void and not voidable, gives full weight to the words of Ellsworth in the Connecticut convention (where with a clearness not elsewhere discoverable he defended the new order as one based on law), and when moreover we appreciate, as Mr. Brown has helped us to do, the work of Ellsworth in the establishment of the courts and in securing the passage of the Judiciary Act, we are entitled to a substantial conjecture that Ellsworth was peculiarly responsible for the most striking, perhaps the most important, thing that was done during those days when the institutions of the government were being formed. For it must be noted, of course, that the Revolution and the formation of the Constitution resulted in the establishment of a new kind of imperial state, based upon a new idea, built upon law and not like the old—or the new—empire of England based upon opportunism. This it is that is the most distinguishing trait of the American constitutional system; and any combination of facts that, even by conjecture, will enable us in the smallest measure to lift the process of its creation out of the gloom of uncertainty is a combination worth presenting. Certainly Mr. Brown has not seen quite face to



face the relation between the second clause of article vi. of the Constitution on the one hand (which had its origin, as far as the Convention was concerned, in the work of the Small State Party), and the Judiciary Act on the other.

In dealing with Ellsworth's speeches in the Convention the author has followed Bancroft's method, collating all the reports to be found. This is of doubtful propriety. To be sure we do not know just what Ellsworth said; but we do know what Madison and Yates reported that he said, and the quotation marks are properly used to indicate these reports. The modern historical student has a natural and deeply-rooted objection to any acceptance of Bancroft's methods in handling quotations, even where as in this instance the results are not serious.

The book appears to me in most respects to estimate rightly the work and influence of the Connecticut men in the Convention. It points out clearly that, while Ellsworth desired to preserve the states, he was not unfavorable to a national government; and it does not leave the impression that the great compromise meant the establishment of a confederation of sovereign states. Thoughtlessly, however, the author falls into the trap set in Madison's notes, June 15, and classifies Connecticut with New York. The truth is that the Connecticut trio differed so much from Lansing and Yates, and from Paterson of New Jersey, that we are tempted to doubt whether the former delegation took any part in the formation of the Small State plan, despite much testimony as to their participation (Madison's notes, June 15; Martin's *Genuine Information*, in Elliot, I. 349). To the following statement, also, one might make objection: "Ellsworth, however, declared: 'The United States are sovereign on one side of the line dividing their jurisdiction—the states on the other. Each ought to have power to defend their respective sovereignties.' These were words, one fancies, from which comfort might have been drawn by the planners of a New England Confederacy two-score years later, and by the builders of the Southern Confederacy" (p. 163). The subject under consideration was treason; to announce that a state must have the right to punish treason against itself and that it retains a portion of sovereignty certainly gives no comfort to the builders of Confederacy, which was founded on the doctrine of indivisible sovereignty.

A. C. McLAUGHLIN.

*American Diplomacy: its Spirit and Achievements.* By JOHN BASSETT MOORE, LL.D., Professor of International Law and Diplomacy, Columbia University. (New York and London: Harper and Brothers. 1905. Pp. xii, 286.)

*Historia de la Diplomacia Americana: Política Internacional de los Estados Unidos.* Por MARTIN GARCÍA MÉROU, Enviado Extraordinario y Ministro Plenipotenciario de la República Argentina. (Buenos Aires: Félix Lajouane y Ca. 1904. Pp. xxix, 398; xxviii, 515.)